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October 16, 2018

959728

FEDERAL EXPRESS

Mike Rafati, Enforcement Specialist
U.S. Environmental Protection Agency, Region 5
Superfund Division-Emergency Response Branch 2
Enforcement Support Section, SE-5J
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Request for Information Pursuant to Section 104(e) of CERCLA
Behr Dayton Thermal Products VOC Plume Site
Dayton, Montgomery County, Ohio
Spill Site Identification Number: B5FH

Dear Mr. Rafati:

This letter is in response to the United States Environmental Protection Agency's ("EPA") June 12, 2018 Request for Information Pursuant to Section 104(e) of CERCLA ("Request for Information") directed to La Mirada Products Co., Inc. (the "Company") in connection with the above-captioned matter.¹ Nothing in this response is intended to waive, restrict, or otherwise impair any arguments or defenses to CERCLA liability or otherwise, and the Company hereby expressly preserves its right and ability to raise any and all such arguments and defenses. The following response is the result of the Company's reasonable, diligent search of information that is currently in its possession and available to it, and each response is subject to the following objections which are specifically incorporated by reference in each response:

The Company makes this response without any waiver of its rights, defenses, and/or applicable privileges, including but not limited to the attorney-client and attorney work product privileges (and to the extent any of EPA's requests seek privileged information, the Company

¹ By e-mails dated June 26, August 15, and September 24, 2018, EPA agreed to extend the Company's response deadline to October 16, 2018.

objects to any such request).² The Company objects to EPA's definitions and instructions as overly broad, vague, unduly burdensome, and requesting information and documentation beyond the scope allowed or required by CERCLA Section 104(e). The Company additionally and specifically objects to the following definitions for the stated reasons: (i) Facility – EPA's definition for this term is overly broad, vague, unduly burdensome and would arguably encompass any location where Company has ever operated, regardless of its nexus or relationship with the Behr Dayton Thermal Products VOC Plume Site in Dayton, Ohio ("Behr Dayton Site"). Company's response is specifically limited to the following facility that is believed to be located within or adjacent to the Behr Dayton Site: 220 Janney Road, Dayton, Ohio 45404 ("Janney Facility"); (ii) "Business Activities" – EPA's definition for this term is overly broad, vague, unduly burdensome and exceeds the scope of permissible topics under CERCLA Section 104(e). Company's response is specifically limited to the following topics potentially relevant to the Behr Dayton Superfund Site: (1) the identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility; (2) the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility; (3) information relating to the ability of a person to pay for or to perform a cleanup; (iii) "Identify" – EPA's definitions for this term are overly broad, vague, unduly burdensome and impermissibly require a narrative response for information plainly reflected in documents being produced to EPA; (iv) "Material(s)" and "Waste(s)" – EPA's definitions for these terms are overly broad, vague, unduly burdensome and exceed the scope of permissible topics under CERCLA Section 104(e). Company's response is specifically limited to materials/wastes known or believed to contain hazardous substances, pollutants or contaminants within the scope of CERCLA.

With regard to EPA's definitions, instructions and requests for specific types of information and/or narrative responses, the Company notes its objection to the extent that the requested information is reflected in the documents that the Company is producing pursuant to this response (the Company notes that CERCLA does not require it to provide narrative responses for information plainly reflected in the documents that it is producing to EPA).

Company further objects to EPA's Request for Information because we believe that the Company's potential liability under CERCLA, if any, for the Behr Dayton Site is barred by the Plan of Reorganization approved by the Bankruptcy Court for the District of Delaware and the United States District Court for the District of Delaware on June 20, 2006. *See* La Mirada Products Co. Inc. Bankruptcy Documents ("La Mirada Bankruptcy Documents") LMP 000480-000809. In the bankruptcy context, the Seventh Circuit, Second Circuit, and the Bankruptcy Court for the Southern District of Ohio have held that a "claim" under CERCLA arises when the underlying act

² The Company is not producing copies of privileged communications, including communications with or on behalf of legal counsel related to this 104(e) response and/or pending/prior litigation/corporate acquisitions. Notwithstanding the Company's withholding of privileged communications, the Company does confirm that relevant factual information, to the extent reflected in such privileged communications, is included in the Company's 104(e) response.

is committed. *See e.g., Matter of CMC Heartland Partners*, 966 F.2d 1143, 1146 (7th Cir. 1992) (holding that “to the extent §§ 106 and 107 require a person to pay money today because of acts before or during the reorganization proceedings, CERCLA creates a ‘claim’ in bankruptcy.”); *United States v. LTV Corp. (In re Chateaugay Corp.)*, 944 F.2d 997, 1000 (2d Cir. 1991) (finding that “an obligation to reimburse EPA for response costs is a dischargeable claim whenever based upon a pre-petition release or threatened release of hazardous substances, even the prepetition release has been discovered by EPA (or anyone else)”; *Inc. v. Blue Tee Corp. Quapaw Tribe (In re Eagle-Picher Indus., Inc.)*, No. 91-10100, 2005 WL 4057842, at *5 (Bankr. S.D. Ohio Oct. 6, 2005) (adopting the “underlying act” standard for CERCLA claims).

The Company filed for reorganization under Chapter 11 of the United States Bankruptcy Code in June 2001.³ *See* La Mirada Bankruptcy Documents LMP 000480-000809. By order dated May 3, 2002, the Bankruptcy Court established a bar date of January 15, 2003, the last deadline to file proof of claims in the bankruptcy proceeding. *Id.* EPA not only received notice of the bar date, but it also filed certain claims against the Company in the bankruptcy proceeding for cost recovery relating to the D’Imperio, ECC/Third Site, Ewan Durabond and Duane Marine Salvages superfund sites. Importantly, EPA did not file a claim relating to the Behr Dayton Site or any of the facilities therein. *Id.*

The confirmed Plan of Reorganization provides that all Claims or other liabilities that arose on or before the Effective Date (June 20, 2006) are discharged. *Id.* As defined in the Plan, “Claims” include “Environmental Claims,” which are defined in the Plan as “a Claim of a governmental unit against any Debtor relating to alleged violations of, or noncompliance with, any federal or state environmental laws or regulations, but shall not include any Asbestos Personal Injury Claim or Asbestos Property Damage Claim.” *Id.* The Plan of Reorganization also states that all entities that hold a discharged claim are enjoined from taking action to recover on a discharged claim. *Id.* This permanent injunction is included in the Order confirming the Plan. *Id.*

The EPA knew, or through the exercise of reasonable diligence, should have known about contamination at one or more facilities within the Behr Dayton Site prior to 2003. In 1989, the Ohio EPA became aware of groundwater contamination at the Gem City Chemicals, Inc. facility located at or near the center of the Behr Dayton Site.⁴ In 1992, the Ohio EPA entered an Administrative Order on Consent with respect to the Gem City facility.⁵ This document, along

³ In Re: USG Corporation, et al., 1:01-BK-02094.

⁴ *See* EPA Proposed Plan for Behr Dayton Thermal VOC Plume Site (“EPA Proposed Plan”), U.S. EPA (September 2018), p. 5, available at <https://semspub.epa.gov/work/05/942664.pdf>.

⁵ “On July 6, 1992, Ohio EPA and Gem City entered into an Administrative Order on Consent in which Gem City agreed to prevent the further off-property migration of contaminants from the Facility.” *Id.*

with various environmental investigations of other facilities located in the Behr Dayton Site, e.g., the Aramark and Behr/MAHLE facility,⁶ were also publicly available prior to 2003.

Therefore, we believe that any CERCLA claim against the Company, if any, with respect to the Behr Dayton Site arose before the Effective Date for the Plan of Reorganization and was discharged because the EPA did not file the requisite proof of claim before the bar date of January 15, 2003.

Corporate and Janney Facility History

Company provides the following corporate and Janney Facility history based on its reasonable, diligent search for, and review of, information that is currently in the Company's possession and available to it.

The Company (La Mirada Products, Inc.) is a subsidiary of USG Corporation. On August 17, 1987, USG Industries, Inc., also a subsidiary of USG Corporation, acquired the stock of DAP Inc. from Beecham Holdings, Inc. and Beecham Home Improvement Products, Inc. At the time of the acquisition, DAP Inc. owned and operated the Janney Facility and continued to do so. On August 23, 1991, USG Corporation sold the assets of DAP Inc., including the Janney Facility, to Wassall PLC and Wassall USA Acquisition Inc. Subsequent to that sale, the DAP Inc. entity (which no longer owned the Janney Facility or other assets sold to Wassall) changed its name to La Mirada Products, Inc. La Mirada Products, Inc., at that time, operated a plant in California unrelated to the DAP business.

Based on a review of information provided by Beecham at the time USG purchased the stock of DAP, the following is historical information regarding DAP prior to USG's ownership, which information has not been independently verified: Dicks and Wiggim Co. was incorporated in Ohio on or about 1903, and in 1913 became the Dicks-Pontius Company. In the late 1950s, the Dicks-Pontius Company merged with the Armstrong Company, forming an entity renamed as Dicks-Armstrong-Pontius ("DAP"). In 1960, DAP was acquired by Plough, Inc., becoming part of the Schering-Plough group following the merger of those two companies in 1971. On March 1, 1983, Beecham Group plc, a U.K.-based multinational company, acquired DAP, Inc. from Schering-Plough. DAP, Inc., operated as an integrated separate entity under the direction of Beecham Home Improvement Products Inc. ("BHIP") until July 20, 1987 when BHIP merged DAP, Inc. into itself with H.I. Ohio as the surviving entity. Concurrent with the merger, H.I. Ohio changed its name to DAP Inc. (no comma).

On information and belief, the Janney Facility was constructed on or around 1967 and as of 1987 the Janney Facility was classified as a generator of hazardous waste and utilized off-site TSD facilities for solid and hazardous waste disposal. It is believed that the Janney Facility produced latex and solvent based adhesives, generated solvent waste, and that prior to 1987, Ohio

⁶ In 2002, "Chrysler" notified the Ohio EPA that the volatile organic compound ("VOC") plume from the Behr Dayton Thermal LLC facility (the "MAHLE Facility" a/k/a the "Behr Facility") was migrating offsite in the groundwater.⁶ *Id.*

EPA received/made a complaint relating to solvent drums being buried at the Janney Facility, but additional information regarding this complaint could not be located. On information and belief, on or around January 18, 1990, DAP Inc. and USG Corp. received notice from Ohio EPA of the presence of contaminants at the Janney Facility and Ohio EPA conducted an investigation and may have determined that DAP spilled various chemicals at the Janney Facility while transferring chemicals from tankers into the building (date unknown), and an investigation/workplan may have been ordered by Ohio EPA to determine the extent of soil/groundwater contamination (date unknown), if any, and that a groundwater treatment and monitoring system may have been constructed around this time period; however, the Company did not locate any underlying documents regarding this incident. It is also believed that the Janney Facility had underground storage tanks for both hazardous and non-hazardous materials, did not discharge its sanitary water to public treatment facilities, and did not file for status as a hazardous waste TSD facility.

EPA's Questions and the Company's Responses

1. State the full legal name, address, telephone number, position(s) held by, and tenure of the individual(s) answering any of these Information Requests. For purposes of this Information Request, the "Facility" is the location or locations within or near the Site where the Company operates or operated.

Response: The responses to the EPA Questions listed below constitute a corporate response prepared at the request of counsel for USG Corporation, the parent company of the Company, as authorized by the Company.

Mary A. Martin
Vice President and Associate General Counsel
USG Corporation
312-436-5363
Tenure: 18 years

2. Identify all persons consulted in the preparation of the answers to these Information Requests.

Response: The responses are based upon information provided or researched by USG Corporation or Company employees or their counsel and upon records regularly kept by the Company in the ordinary course of business. Some of the persons or documents consulted ultimately did not have any relevant information that was responsive to EPA's Information Request. The Company reserves and does not waive any and all privileges which may apply to these or other individuals including, but not limited to, the attorney-client and attorney work product privileges. Persons consulted were Mary A. Martin (counsel for USG Corporation) and Kimberly Ericksen (senior paralegal for Corporation).

3. Identify all documents consulted, examined or referred to in the preparation of the answers to these Information Requests, and provide copies of all such documents.

Response: In the course of the Company's preparation of this response, it has "consulted, examined, or referred to" documents protected by privilege and documents which were ultimately irrelevant to EPA's Request for Information. As such, the Company objects to the extent that EPA is requesting production of privileged information or documents that were reviewed by the Company or its agents in the course of responding to the Request for Information (regardless of relevance).

Without waiving those objections, the Company has identified non-privileged documents that are responsive to EPA's Request for Information, true and correct copies of which are being produced contemporaneously with these responses.

4. Identify the Company's policy with respect to document retention.

Response: The Company has a document retention policy which is based on the type and content of the document. See LMP 000954-001033.

5. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons.

Response: At this time, other than the persons/entities identified in this response (including persons/entities identified in the documents produced by the Company as part of this response), the Company does not have reason to believe that there may be other persons within the Company who are able to provide a more detailed or complete response to any Request for Information or additional responsive documents. The Company specifically objects to any request for information regarding persons who are not affiliated with the Company, and does not provide a response regarding any such persons (including persons and/or entities who are or may be liable under CERCLA as owners, operators, transporters, arrangers, and/or otherwise at the Site). Company specifically notes that Ohio EPA and/or EPA have been actively involved at this Site since at least 1989 and presumably have knowledge and access to voluminous information related to the Site, and Company objects to the extent EPA seeks or requests that Company reproduce, reiterate, or otherwise respond with such duplicative and/or publicly-accessible information.

6. Provide the date the Company was incorporated, formed, or organized. Identify the state in which the Company was incorporated, formed, or organized.

Response: The Company has not been able to independently verify the date of incorporation of the La Mirada Products Co., Inc. entity, but see "Corporate and Janney Facility History" section above and corporate documents produced with the Company's 104(e) response for additional information related to the Company's history.

7. Identify the business structure, for example, sole proprietorship, general partnership, limited partnership, joint venture, or corporation, under which the Company currently exists or operates and identify all former business structures under which it existed or operated since its inception.

Response: The Company has historically y existed and operated as a corporation and currently does so.

8. If Company is a corporation, respond to the following requests:

- (a) Provide a copy of the Articles of Incorporation and By-Laws of the Company;**
- (b) Provide Company's audited financial statements for the past five fiscal years, including, but not limited to those filed with the Internal Revenue Service. If audited financial statements are not available, please state the reasons that they are not available, and provide the financial statements that management would review at the conclusion of each fiscal year;**
- (c) Identify all of Company's current assets and liabilities and the persons who currently own or are responsible for such assets and liabilities; and**
- (d) Provide a list of any investments that the corporation may own. For example, any ownership in stock should list corporate name, number of shares owned and price at a current specific date. Ownership of real estate should itemize property location, type of property (land, office building, factory, etc.), size of property, purchase price and current market valuation. These schedules should agree with the financial statement presentations.**

Response:

Company specifically reiterates its objection that this request is overly broad, unduly burdensome, vague and exceeds the scope of the topics articulated in CERCLA Section 104(e). Without waiving, and subject to, Company's objections, Company responds as follows:

- (a) Company states that it is providing the following documents responsive to these requests: LMP 000001-000037.
- (b) Company states that documents responsive to this request are Confidential Business Information ("CBI"), and that production of responsive CBI documents will be forthcoming.
- (c) Company states that documents responsive to this request are Confidential Business Information ("CBI"), and that production of responsive CBI documents will be forthcoming.

(d) Company objects on the grounds that this request is overbroad, unduly burdensome and vague with respect to the phrase “may own.” Without waiving these objections, Company states that documents responsive to this request are Confidential Business Information (“CBI”), and that production of responsive CBI documents will be forthcoming.

9. If Company is a partnership, provide copies of the Partnership Agreement.

Response: N/A

10. If Company is a trust, provide all relevant agreements and documents to support this claim.

Response: N/A

11. List and describe all casualty, liability, and/or pollution insurance coverage that is and was carried by you, your predecessors and/or successors, including any self-insurance provisions, that relates to hazardous substances and/or the Facility and provide copies of all of these insurance policies.

Response: Company objects to this request because it calls for legal conclusions with respect to coverage under one or more insurance policies. Company further objects on the grounds that this request is overbroad, unduly burdensome and vague in so far as it seeks insurance policies from Company’s predecessors and/or successors without providing any applicable time frame. Without waiving these objections, Company states that it has not been able to locate documents responsive to this request with regard to the Janney Facility.

Further, in the Plan of Reorganization identified above, the Debtors transferred to the Asbestos Personal Injury Trust, as defined in the Plan, the Asbestos Personal Injury Insurance Asset. That Asset, as defined in the Plan, includes “all of the Debtors’ or their respective predecessors in interest’s rights arising under the DAP Asset and the insurance policies identified on Exhibit I.A.14, in each case to the extent related to Asbestos Personal Injury Claims.” The “DAP Asset,” again as defined in the Plan, means any rights of any Debtor for indemnification arising under or related to the 1987 purchase agreement with Beecham. See LMP 000480-000809.

12. To the extent not provided in your response to Request 11 above, provide copies of all insurance policies that may potentially provide the owners with insurance for bodily injury, property damage and/or environmental contamination in connection with the Facility and/or your business operations. Include, without limitation, all comprehensive general liability, primary, excess, and umbrella policies.

Response: Company objects to this request because it calls for legal conclusions with respect to coverage under one or more insurance policies. Company further objects on the grounds that this request is overbroad, unduly burdensome, and vague because it fails to provide a relevant time period, and requests insurance policies for Company’s “business operations.” Without waiving

these objections, Company states that it has not been able to locate documents responsive to this request with regard to the Facility.

13. To the extent not identified in your response to Requests 11 and 12 above, provide all other evidence of casualty, liability and/or pollution insurance issued to you or the owners of the Facility.

Response: Company objects to this request on the same bases as Request No. 12 above. Company further objects on the grounds that this request is duplicative and burdensome, and potentially seeks information regarding insurance policies that have no relevance or connection to the Janney Facility or Behr Dayton Site. Without waiving these objections, Company states that it has not been able to locate documents responsive to this request with regard to the Janney Facility.

14. If there are any such policies from Requests 11, 12, or 13 above which you are aware but neither possess copies, nor are able to obtain copies, identify each such policy to the best of your ability by identifying:

- (a) The name and address of each insurer and of the insured;
- (b) The type of policy and policy numbers;
- (c) The per occurrence policy limits of each policy; and
- (d) The effective dates for each policy.

Response: N/A

15. Identify all communications and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Company under any insurance policy in connection with the Facility. Include any responses from the insurer with respect to any claim.

Response: Company objects to this request on the grounds that it arguably seeks privileged attorney client communications, attorney work product, and documents protected under the common interest privilege doctrine. Company also objects on the grounds that this request is overbroad, unduly burdensome and vague because the request does not provide a relevant timeframe and seeks to obtain documents/information that are irrelevant and not likely to lead to admissible evidence. Without waiving these objections, Company states that it has not been able to locate documents responsive to this request with regard to the Janney Facility.

16. Identify any previous settlements with any insurer in connection with the Facility, or for any claims for environmental liabilities during the time period in question. Include any policies surrendered or cancelled by the Company or insurer.

Response: Company objects to this request on the grounds that it seeks information regarding confidential settlements. Company further objects to this request on the grounds that the request is overbroad and unduly burdensome because the “time period in question,” defined by EPA as January 1, 1924 through present, encompasses more than ninety years and precedes the Janney Facility’s construction in 1967, and because the request potentially seeks information regarding insurance policies that have no relevance or connection to the Janney Facility or Behr Dayton Site. Without waiving these objections, Company states that it has not been able to locate documents responsive to this request with regard to the Janney Facility.

17. Identify any and all insurance, accounts paid or accounting files that identify Company’s insurance policies.

Response: Company objects on the grounds that this request seeks information that is duplicative of Requests Nos. 11, 12, 13 and 14. Company further objects on the grounds that this request is overbroad and unduly burdensome in that it fails to provide a relevant time period for the requested information and because the request potentially seeks information regarding insurance policies that have no relevance or connection to the Janney Facility or Behr Dayton Site. Without waiving these objections, Company states that it has not been able to locate documents responsive to this request.

18. Provide copies of all income tax returns sent to the Federal Internal Revenue Service in the last five years.

Response: Company objects to this request as overly broad, unduly burdensome, and because it seeks irrelevant information beyond the scope of CERCLA 104(e). Without waiving these objections, Company states that documents responsive to this request are Confidential Business Information (“CBI”), and that production of responsive CBI documents will be forthcoming.

19. State the dates during which you owned, operated or leased the Facility and provide copies of all documents evidencing or relating to such ownership, operation or lease arrangement (e.g., deeds, leases).

Response: Company objects on the grounds that this request is overly broad, unduly burdensome and vague as to the meaning of “documents evidencing or relating to such ownership, operation or lease arrangement).” Without waiving these objections, please see “Corporate and Janney Facility History” section above and the documents being produced with the Company’s 104(e) response.

20. Provide information about the Facility, including but not limited to the following:

- (a) **Property boundaries, including a written legal description;**
- (b) **Location of underground utilities (telephone, electrical, sewer, water main, etc.);**

- (c) Surface structures (e.g., buildings, tanks);
- (e) Groundwater wells, including drilling log;
- (f) Storm water drainage system, and sanitary sewer system, past and present, including septic tank(s), subsurface disposal field(s) and other underground structures; and where, when and how such systems are emptied;
- (g) Any and all additions, demolitions or changes of any kind on, under or about the Facility, to its physical structures or to the property itself (e.g., excavation work); and any planned additions, demolitions or other changes to the Facility; and
- (h) All maps and drawings of the Facility in your possession.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Without waiving these objections, please see “Corporate and Janney Facility History” section above and the documents being produced with the Company’s 104(e) response.

21. Provide a complete list of employees who had knowledge of the use of hazardous substances and disposal of wastes at the Facility during any or all of the period of time that the Company operated at or was otherwise associated with the Facility. For each employee listed, provide the following information:

- (a) The employee’s full name;
- (b) The employee’s current or last known address and telephone number, including the last known date on which you believe each address and telephone number were current;
- (c) The dates that the employee worked at the Facility;
- (d) The position(s) the employee held under any of the Company’s business structures; and
- (e) The employee’s job title(s) and the corresponding dates during which the Company believes that the employee would have had knowledge of the use and disposal of wastes.

Response: Company objects to this request on the grounds that it is vague and overbroad as to the phrase “was otherwise associated with the Facility.” Company also objects to the extent that

this request requires it to speculate as to the personal knowledge of former employees or other third parties, or to the extent that the request assumes that hazardous substances were used/disposed of at the Janney Facility. Without waiving these objections, Company states that while it does not have insight as to the “knowledge” of such employees, Company is producing documents in response to this request that identify former Company employees who worked or may have worked at the Janney Facility, and to the extent not reflected in such documents, Company also states upon information and belief that George J. Stockham (Director of Manufacturing, Beecham), Jim Short (Production Superintendent, Janney Road Plant), and Jim Miner (Plant Engineer, Janney Road Plant) worked or knew about the operations of the Janney Facility prior to 1987. Company is without knowledge as to whether or not such employees had knowledge regarding the use of any hazardous substances and/or disposal of wastes at the Janney Facility, except to the extent such knowledge is reflected in the contents of the documents being produced.

22. Describe the nature of your activities or business at the Facility, with respect to purchasing, receiving, processing, storing, treating, disposing or otherwise handling hazardous substances or materials at the Facility.

Response: Company objects to this request on the grounds that it is vague, overbroad and unduly burdensome because the request is not limited in time or scope, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Company also objects to the extent that this request assumes that Company purchased, received, processed, stored, treated, disposed or otherwise handled hazardous substances or materials at the Janney Facility. Without waiving these objections, please see “Corporate and Janney Facility History” section above and the documents being produced with the Company’s 104(e) response.

23. Provide a list of all chemicals and hazardous substances used at the Facility, identifying the chemical composition and quantities used. Provide copies of Material Safety Data Sheets or Safety Data Sheets for all chemicals and hazardous substances used.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome because the request is not limited in time or scope or limited to the Company. Company objects to this request because it seeks information regarding persons who are not affiliated with Company, and because responsive information regarding third parties appears to be publicly available and/or already in EPA’s possession (e.g., documents linked to EPA’s website for the Behr Dayton Site). Company further objects on the grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because it seeks information regarding non-hazardous and hazardous substances unrelated to the Behr Dayton Site. Without waiving these objections, please see “Corporate and Janney Facility History” section above and the documents being produced with the Company’s 104(e) response.

24. Identify the acts or omissions of any persons, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants or contaminants from the Facility and identify damages resulting therefrom.

Response: Company objects to this request on the grounds that it is vague, overbroad, unduly burdensome and appears to ask for legal conclusions with respect to third party liability. Company further objects to this request because it seeks information regarding persons who are not affiliated with Company, and because responsive information regarding third parties appears to be publicly available and/or already in EPA's possession (e.g., documents linked to EPA's website for the Behr Dayton Site). Without waiving its objection, Company states that it has not been able to locate additional information responsive to this request.

25. Identify all persons having knowledge or information about the generation, transportation, treatment, disposal or other handling of hazardous substances by you, your contractors or by prior owners and/or operators.

Response: Company objects to this request on the grounds that it is overbroad, vague and unduly burdensome and specifically objects because this request is not limited to the Janney Facility or the Site and therefore seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Company further objects to this request because it seeks information regarding persons who are not affiliated with Company. Without waiving these objections, Company states that Company is providing documents in response to this request that identify Company employees who worked or may have worked at the Janney Facility, however, Company is without knowledge as to whether or not such employees had knowledge or information regarding the generation, transportation, disposal, or other handling of hazardous substances at the Janney Facility during Company's ownership, except to the extent such knowledge is reflected in the contents of the documents being produced.

26. Did you ever use, purchase, store, treat, dispose, transport or otherwise handle any hazardous substances or materials? If the answer to the preceding question is anything but an unqualified "no," identify:

- (a) The chemical composition, characteristics, physical state (e.g., solid, liquid) of each hazardous substance;
- (b) Who supplied the Company with such hazardous substances;
- (c) How such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;
- (d) When such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;

- (e) **Where such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you; and**
- (f) **The quantity of such hazardous substances used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you.**

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome in that the information sought is not limited to the Janney Facility, the Site, or any relevant time period. Company further objects to this request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, please see “Corporate and Janney Facility History” section provided above. Further, Company is without knowledge as to sub-requests (a) through (f), except to the extent such knowledge is reflected in the contents of the documents being produced in response to EPA’s 104(e) request.

27. If the Company discharged any of its waste stream to the sewer at the Facility, provide copies of all permits and all analyses performed on discharged water, and identify all locations where waste streams were discharged.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome in that it appears to seek information regarding waste that does not contain hazardous substances, pollutants or contaminants within the scope of CERCLA, and is vague in its undefined use of the term “waste stream.” Without waiving its objections, please see “Corporate and Janney Facility History” section above and the documents being produced with the Company’s 104(e) response.

28. For each waste stream generated at the Facility, describe the procedures for (a) collection, (b) storage, (c) treatment, (d) transport, and (e) disposal of the waste stream.

Response: Company objects to this request on the grounds that it is vague, overbroad and unduly burdensome in that it appears to seek information regarding waste that does not contain hazardous substances, pollutants or contaminants within the scope of CERCLA, and is vague in its undefined use of the term “waste stream.” Without waiving its objection, Company is without knowledge as to sub-requests (a) through (e), except to the extent such knowledge is reflected in the “Corporate and Janney Facility History” section above and the contents of the documents being produced with the Company’s 104(e) response.

29. Identify all leaks, spills, or other releases into the environment of any hazardous substances, waste, pollutants or contaminants that have occurred at or from the Facility. In addition, identify and provide supporting documentation of:

- (a) The date each release occurred;**
- (b) The cause of each release;**
- (c) The amount of each hazardous substance, waste, pollutant or contaminant released during each release;**
- (d) Where each release occurred and what areas were impacted by the release; and**
- (f) Any and all activities undertaken in response to each release, including the notification of any local, state, or federal government agencies about the release.**
- (g) Any and all investigations of the circumstances, nature, extent or location of each release or threatened release including, the results of any soil, water (ground and surface) or air testing undertaken; and**
- (h) All persons with information relating to these releases.**

Response: Company objects to this request on the grounds that it is vague, overbroad and unduly burdensome in that it appears to seek information regarding waste that does not contain hazardous substances, pollutants or contaminants within the scope of CERCLA. Without waiving its objection, please see “Corporate and Janney Facility History” section above. Further and without waiving its objection, Company is without knowledge as to sub-requests (a) through (g), except to the extent such knowledge is reflected in the contents of the documents being produced with Company’s 104(e) response.

30. Identify and provide the information below for all volatile organic compounds (VOCs), most notably trichloroethylene (TCE) and tetrachloroethylene (PCE), that are or were used at, or transported to, the Facility since the beginning of the Company’s operations at the Facility:

- (a) The trade or brand name, chemical composition, and quantity used for each VOC-containing substance and the Material Safety Data Sheet or Safety Data Sheets for each product;**
- (b) The location(s) where each VOC-containing substance is or was used, stored, and disposed of, and the dates of chemical or hazardous substance use, storage or disposal at each location;**

- (c) Identify the specific equipment used in operations during which VOCs were utilized, and state the year(s) that the equipment was installed;
- (d) State whether the storage areas and equipment in which VOC-containing substances were equipped with secondary containment structures;
- (e) Describe the waste streams generated by operations and equipment with respect to VOCs and VOC-containing substances;
- (f) State the volume and frequency of the VOC-containing waste materials discharged from the operations, and describe the waste storage methods for the waste materials;
- (g) Provide copies of all analyses for substances containing VOCs performed on the materials used in equipment, during operations, and discharged from equipment prior to disposal;
- (h) Provide copies of all analyses for substances containing VOCs in water, sludge or other substances generated during operations;
- (i) State the quantity of VOC-containing substance(s) purchased (in gallons), the time period during which it was used, and the identity of all persons who used it; and
- (j) Identify the supplier(s), and provide copies of all contracts, service orders, shipping manifests, invoices, receipts, canceled checks, or any other documents pertaining to the supply of chemicals or hazardous substances.

Response: Company objects to this request on the grounds that it is vague, overbroad and unduly burdensome. Without waiving its objection, Company states that it has not been able to locate information or documents responsive to this request with regard to the Janney Facility.

31. If any substance containing VOCs as a component was used in any operations at the Facility since the beginning of the Company's operations at the Facility, provide a complete description of those operations if not already described in your response to Request 26 above. Indicate the approximate volume of VOCs or VOC-containing substances used per month at the Facility, the period of time during which VOCs or VOC-containing substances were used, and describe the storage and disposal practices in effect for materials containing VOCs.

Response: Company objects to this request on the grounds that it is vague, overbroad and unduly burdensome. Without waiving its objection, Company states that it has not been able to locate information or documents responsive to this request with regard to the Janney Facility.

32. Please identify the source or processes that produced VOC-containing materials used in the Company's operations and equipment since the beginning of the Company's operations at the Facility.

Response: Company objects to this request on the grounds that it is vague, overbroad and confusing. Without waiving its objection, Company states that it has not been able to locate information or documents responsive to this request with regard to the Janney Facility.

33. Please describe where the Company disposed of VOC-containing materials used in the Facility's operations and equipment since the beginning of the Company's operations at the Facility.

Response: Company objects to this request on the grounds that it is vague, overbroad, confusing, and assumes facts not in evidence. Without waiving its objection, Company states that it has not been able to locate information or documents responsive to this request with regard to the Janney Facility, except to the extent reflected in documents produced as part of the Company's 104(e) response.

34. For any release or any suspected release, including VOCs, at and from the Facility not included in the response to Request 33, provide any document describing, evidencing or otherwise documenting such releases.

Response: Company objects to this request on the grounds that it is vague, overbroad, confusing, and assumes facts not in evidence. Without waiving these objections, please see "Corporate and Janney Facility History" section above and documents being produced as part of Company's 104(e) response.

35. Identify all past and present solid waste units (e.g., waste piles, landfills, surface impoundments, waste lagoons, waste ponds or pits, tanks, container storage areas) at the Facility. For each such solid waste unit identified, provide the following information:

- (a) A map showing the unit's boundaries and the location of all known solid waste units whether currently in operation or not. This map should be drawn to scale, if possible, and clearly indicate the location and size of all past and present units;
- (b) The type of unit (e.g., storage area, landfill, waste pile), and the dimensions of the unit;
- (c) The dates that the unit was in use;
- (d) The purpose and past usage (e.g., storage, spill containment);

- (e) **The quantity and types of materials (hazardous substances and any other chemicals) located in each unit;**
- (f) **The construction (materials, composition), volume, size, dates of cleaning and condition of each unit; and**
- (g) **If unit is no longer in use, how was such unit closed and what actions were taken to prevent or address potential or actual releases of waste constituents from the unit.**

Response: Company objects to this request on the grounds that it is vague, overbroad, confusing, and assumes facts not in evidence. Without waiving these objections, please see “Corporate and Janney Facility History” section above and documents being produced as part of Company’s 104(e) response.

36. Identify the prior owners of the Facility. For each prior owner, further identify:

- (a) **The dates of ownership;**
- (b) **All evidence showing that they controlled access to the Facility; and**
- (c) **All evidence that a hazardous substance, pollutant or, was released or threatened to be released at the Facility during the period that it owned the Facility.**

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company’s possession, custody or control. Company further objects to this request on the grounds that the request is vague in so far as “controlled access” is an undefined and ambiguous term susceptible to more than one meaning. Without waiving these objections, please see “Corporate and Janney Facility History” section above and documents being produced as part of Company’s 104(e) response.

37. Identify the prior operators, including lessors, of the Facility. For each such operator, further identify:

- (a) **The dates of operation;**
- (b) **The nature of prior operations at the Facility;**
- (c) **All evidence that they controlled access to the Facility; and**
- (d) **All evidence that a hazardous substance, pollutant or contaminant was released or threatened to be released at or from the Facility and/or its solid waste units during the period that they were operating the Facility.**

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company's possession, custody or control. Company further objects to this request on the grounds that the request is vague in so far as "controlled access" is an undefined and ambiguous term susceptible to more than one meaning. Without waiving these objections, please see "Corporate and Janney Facility History" section above and documents being produced as part of Company's 104(e) response.

38. List the EPA Identification Numbers of the Company.

Response: N/A

39. Provide copies of all local, state and federal environmental permits ever granted for the facility or any part thereof (e.g., Resource Conservation and Recovery Act (RCRA) permits, National Pollutant Discharge Elimination System permits).

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company's possession, custody or control. Company further objects to this request on the grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Facility. Without waiving these objections, Company states that it has not been able to locate information or documents responsive to this request.

40. Identify if the Facility ever had "interim status" under RCRA. If so and the Facility does not currently have interim status, describe the circumstances under which the Facility lost interim status.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company's possession, custody or control. Company further objects to this request on the grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Facility. Without waiving these objections, Company states that it has not been able to locate information or documents responsive to this request.

41. Identify if the Facility ever filed a notification of hazardous waste activity under RCRA. Provide a copy of such notification.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company's possession, custody or control. Company further objects to this request on the grounds that this request seeks information that is irrelevant and not reasonably

calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Facility. Without waiving these objections, please see "Corporate and Janney Facility History" section above.

42. Provide all reports, information or data related to soil, soil gas, water (i.e., groundwater and surface water), air quality or geology/hydrogeology at and about the Facility. Provide copies of all documents containing such data and information, including both past and current aerial photographs as well as documents containing analysis or interpretation of such data.

Response: Company objects to this request on the grounds that it is overbroad and burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company's possession, custody or control. Company further objects to this request on the grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Road Facility. Without waiving these objections, please see "Corporate and Janney Facility History" section above.

43. State whether you or your consultants are planning to perform any investigations of the soil, water (i.e., groundwater or surface water), geology, hydrology or air quality on or about the Facility. If so, identify:

- (a) What the nature and scope of these investigations will be;
- (b) The contractors or other persons that will undertake these investigations;
- (c) The purpose of the investigations;
- (d) The dates that such investigations will take place and be completed; and
- (e) Where on the Facility such investigations will take place.

Response: Company objects to this request on the grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Company further objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiving these objections, Company states that it currently does not have any plans to perform investigations of soil, water, geology, hydrology or air quality on or near the Janney Facility.

44. Was there ever a spill, leak, release or discharge of hazardous materials into any subsurface disposal system or floor drain inside or under the Facility building? If the answer to the preceding question is anything but an unqualified “no,” identify:

- (a) Where the disposal system or floor drains were located;
- (b) When the disposal system or floor drains were installed;
- (c) Whether the disposal system or floor drains were connected to pipes;
- (d) Where such pipes were located and emptied;
- (e) When such pipes were installed;
- (f) How and when such pipes were replaced, or repaired; and
- (g) Whether such pipes ever leaked or in any way released hazardous materials into the environment.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company’s possession, custody or control. Company further objects to this request on the grounds that the request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Facility. Without waiving these objections, please see “Corporate and Janney Facility History” section above.

45. Describe any leaks, spills or releases of hazardous materials that occurred at the Facility when such materials were being:

- (a) Delivered by a vendor;
- (b) Stored (e.g., in any tanks, drums or barrels);
- (c) Transported or transferred (e.g., to or from any tanks, drums, barrels or recovery units); Or
- (d) Treated.

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or

information not in Company's possession, custody or control. Company further objects to this request on the grounds that the request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Facility. Without waiving these objections, please see "Corporate and Janney Facility History" section above.

46. Has soil ever been excavated or removed from the Facility? Unless the answer to the preceding question is anything besides an unequivocal "no," identify:

- (a) Amount of soil excavated;**
- (b) Location of excavation;**
- (c) Manner and place of disposal and/or storage of excavated soil;**
- (d) Dates of soil excavation;**
- (e) Identity of persons who excavated or removed the soil;**
- (f) Reason for soil excavation;**
- (g) Whether the excavation or removed soil contained hazardous materials and why the soil contained such materials; and**
- (h) All analyses or test results of analyses of the soil that was removed from the Facility.**

Response: Company objects to this request on the grounds that it is overbroad and unduly burdensome. Company objects to this request on the grounds that it seeks documents or information not in Company's possession, custody or control. Company further objects to this request on the grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and/or that relates to any facility besides the Janney Facility. Without waiving these objections, Company states that it has not been able to locate information or documents responsive to this request.

The Company believes that this response fully addresses EPA's Request for Information. If you have any questions or would like to discuss this matter further, please direct any communications

Mike Rafati, Enforcement Specialist

October 16, 2018

Page 23

to me, with a copy to Mary Martin, Vice President and Associate General Counsel, USG Corporation, 550 West Adams Street, Chicago, IL 60661, MAMartin@usg.com.

Sincerely,

/s/ E. Chase Dressman

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Document Production Index

- 1. La Mirada Products Co., Inc. Incorporation and By-Laws: LMP 000001–000037**
 - a) Page references: 5, 6
 - b) Potentially Responsive to Request Nos. 6, 8(a)¹
- 2. DAP Purchase Agreement: LMP 000038–000169**
 - a) Page references: 7, 9, 10, 17
 - b) Potentially Responsive to Request Nos. 11, 19, 20, 21, 36, 37
- 3. Personnel and Organizational Charts for Beecham Home Improvement Products, Inc.: LMP 000170–000223**
 - a) Page references: 10, 12
 - b) Potentially Responsive to Request Nos. 21, 25
- 4. Beecham Group plc, Home Improvement Products Division, Information Memorandum: LMP 000224–000474**
 - a) Page references: 10, 11, 12, 13, 16, 17
 - b) Potentially Responsive to Request Nos. 20, 23, 26, 27, 28, 35, 36, 37
- 5. Hazardous Waste Disposal Facilities 1980: LMP 000475–000479**
 - a) Page references: 12, 13
 - b) Potentially Responsive to Request Nos. 26, 28
- 6. La Mirada Products Co., Inc. Bankruptcy Documents: LMP 000480–000810**
 - a) Page reference: 2
- 7. Permalastic–Durabond–DAP Timetable: LMP 000811–000812**
 - a) Page references: 9, 17
 - b) Potentially Responsive to Request Nos. 19, 36, 37
- 8. Wassall plc Purchase Agreement: LMP 000813–000953**
 - a) Page references: 7, 9, 10, 17
 - b) Potentially Responsive to Request Nos. 11, 19, 20, 36, 37
- 9. Document Retention Schedule: LMP 000954–001033**
 - a) Page reference: 5
 - b) Potentially Responsive to Request Nos. 4

¹ Company provides the information in sub-sections (b) of this Document Production Index for general purposes only and does not admit or otherwise acknowledge that the indicated documents are or are not responsive to the specified Request Numbers. Company specifically notes that the indicated documents may be responsive to other Request Numbers.